No. 97-1141

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, *et al.*,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONSE TO CONDITIONAL CROSS-PETITION OF THE MID-SIZED LOCAL EXCHANGE CARRIERS FOR A WRIT OF CERTIORARI

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QUESTIONS RESTATED

1. Whether the Federal Communications Commission ("FCC") reasonably construed the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, in concluding that "any requesting telecommunications carrier" may obtain access to the incumbent local exchange carriers' ("LECs' ") "unbundled network elements" pursuant to Section 251(c)(3), not merely requesting telecommunications carriers that also have network facilities of their own?

2. Whether the FCC reasonably construed the Act in concluding that when a new entrant purchases access to an incumbent LEC's switch as a "network element," it obtains access to, *inter alia*, the "vertical features" of that switch, given that the Act expressly defines "network element" to include all "features, functions and capabilities" of that network element (47 U.S.C. § 153(29))?

3. Whether the FCC reasonably applied the Act in determining, on multiple and independent grounds, that incumbent LECs must provide new entrants with "nondiscriminatory access" to the "operations support systems" that they use to control the ordering, provision, repair, and billing of the telecommunications services that those new entrants will offer through the LECs' "network elements" under Section 251(c)(3) and through resale of the LECs' services under Section 251(c)(4)?

4. Whether the FCC reasonably applied the Act in determining that "operator service and directory assistance facilities" are "network elements?"

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AT&T Corp., ACC Corp., America's Carriers Telecommunications Association, Competitive Telecommunications Association, Excel Telecommunications, Inc., General Communications, Inc., Sprint Corporation, Telecommunications Resellers Association, and WorldCom, Inc., petitioners in this proceeding, respectfully submit this response to the cross-petition filed by the Mid-sized Local Exchange Carriers ("Mid-sized LECs").

The questions raised in the Mid-sized LECs cross-petition have already been raised in the three prior cross-petitions filed by the Regional Bell Companies, GTE and U S WEST, and the Mid-sized LECs' cross-petition merely reiterates the same arguments advanced in those petitions.

See Conditional Cross-Petition of Regional Bell Companies for a Writ of Certiorari, *Ameritech Corporation, et al.* v. *Federal Communications Commission, et al.* (No. 97-1075) (Dec. 24, 1997); Conditional Cross-Petition for Writ of Certiorari, *GTE Midwest Incorporated* v. *Federal Communications Commission, et al.* (No. 97-1087) (Dec. 30, 1997); Conditional Cross-Petition of U S WEST, Inc. For a Writ of Certiorari, *U S WEST, Inc.* v. *Federal Communications Commission, et al.* (No. 97-1099) (Jan. 5, 1998). Accordingly, the undersigned petitioners respectfully refer the Court to their responses to the cross-petitions filed by the Regional Bell Companies and GTE for a discussion of the questions presented in the Mid-sized LECs' cross-petition. See Petitioners' Response to Cross-Petition of Regional Bell Companies 12-22 (addressing questions 1 and 2 in Mid-sized LECs' cross-petition); Petitioners' Response to Cross-Petition of GTE 8-13 (addressing questions 1 and 2 in Mid-sized LECs' cross-petition).

CONCLUSION

For the reasons stated in our responses to the cross-petitions filed by the Regional Bell Companies and GTE, see Response to BOC cross-petition 13, Response to GTE cross-petition at 2-3, the undersigned petitioners do not oppose the Mid-sized LECs' cross-petition on Question 1. Certiorari on Question 2, however, should be denied.

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